

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.1823 OF 2007

Dated 16th March 2007

Between:

T.Satyanarayana

...Petitioner

and

The Deputy Registrar of Co-operative Societies,
Eluru, West Godavari District & others

...Respondents

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.1823 OF 2007

ORDER:

The petitioner was elected as President of the Primary Agricultural Cooperative Credit Society Limited, the 2nd respondent herein, in the elections held in the year 2005. Prior to that also, he functioned as president of the society. On a complaint made by the Vice-president of the society, the 3rd respondent herein, the 1st respondent caused a preliminary enquiry, through the Divisional Cooperative Officer, Eluru. On the basis of a report dated 21.8.2006, submitted by him, the 1st respondent, the DCO-cum-Joint Registrar, ordered an inspection under Section 52 of A.P. Co-operative Societies Act, 1964 (for short "the Act"). Soon thereafter, the 1st respondent issued a notice dated 5.9.2006, under Section 21AA of the Act, requiring the petitioner to explain as to why he should not be declared to have ceased to be the president of the society, on the basis of the

allegations contained therein. The petitioner submitted his explanation on 29.9.2006. Not being satisfied with the explanation, the 1st respondent passed an order dated 5.10.2006, declaring that the petitioner ceased to be the president of the Managing Committee. The same is challenged in this writ petition.

The petitioner contends that the very basis for invoking power under Section 21AA of the Act, is the existence of a report in an enquiry, contemplated under Section 51 of the Act, and no such enquiry was either held, or concluded, against him. It is also stated that the explanation submitted by him was not taken into account, by the 1st respondent.

Separate counter affidavits are filed by respondents 1 and 2, on the one hand, and respondents 3 and 4, on the other hand. It is urged that the explanation submitted by the petitioner to the show-cause notice was not found to be satisfactory, and that the allegations against him stood proved. It is also pointed out that an order, disqualifying the petitioner, was passed, way back in the year 1995, and that the same was not revealed by him in the subsequent elections.

Heard Sri A.Ramalingeswara Rao, learned counsel for the petitioner, learned Government Pleader for Cooperation, and Sri Satyanarayana Nimmagadda, learned counsel for respondents 3 and 4.

The 1st respondent initiated proceedings under Section 21AA of the Act, against the petitioner. The said provision enables the authority concerned, to declare that the person, against whom it is invoked, had ceased to be the member of the committee. Inasmuch as

it results in nullifying the election of such member to an office, the provisions deserve to be interpreted strictly, and strict compliance must be ensured.

Section 21AA of the Act enables the initiation of proceedings, on two occasions, *viz.*, when the member is found guilty of misuse of property of the society for his personal gain, in an enquiry under the Act; and when he is found responsible for making appointment to any post to the society, in contravention of any regulation. The first ground was pressed into service, against the petitioner.

The expression 'enquiry' employed in sub-section 21A(b) has its own significance. The reason is that an independent section *viz.*, Section 51, is devoted for enquiry into the affairs of the society. A detailed procedure is prescribed there for. The outcome of this enquiry, apart from constituting the basis for initiation of proceedings under Section 21AA, becomes the ground for initiation of Surcharge proceedings also. Therefore, the initiation of enquiry under Section 51 of the Act, and a report holding the person sought to be proceeded against, guilty of misuse of the property of the society, is a *sine-quo-non*, and condition precedent for initiation of action under Section 21AA of the Act.

The record clearly discloses that the only action against the petitioner, at the relevant point of time, was an inspection under Section 52 of the Act. The enquiry, on the one hand, and inspection on the other hand, have different connotations, and naturally would lead to different consequences. Section 21AA of the Act, as observed earlier, takes the outcome of an enquiry, and not inspection, as a basis. Even the inspection caused against the petitioner did not

conclude. It is said to be in preliminary stage. Therefore, the very basis for initiation of proceedings, under Section 21AA, is conspicuously absent. Assuming that there is some basis, for initiation of proceedings, against the petitioner, under the said provision, it is mandatory that aggrieved party must be given an opportunity and the explanation submitted by him must be taken into account.

It is no doubt true that a show-cause notice was issued to the petitioner. It is not in dispute that the petitioner submitted explanation. Apart from denying the allegations made against him, the petitioner made a request to the 1st respondent, to furnish certain documents. The only sentence, through which the explanation submitted by the petitioner was considered, reads as under:

“Where as the objections put forth by T.Satyanarayana in reply to the show-cause notice issued under Section 21AA are not convincing and needs no consideration as these objections are made only to avoid the proposed action of disqualification of his membership in the managing committee of the Gundukolanukunta PACS.”

From this, it is evident that the entire requirement of submission of explanation, and consideration thereof, was reduced into an empty formality. The cumulative effect is that the impugned order cannot be sustained either on facts, or in law.

The writ petition is accordingly allowed, and the impugned order is set aside. There shall be no order as to costs.

16th March 2007

Note: L.R.copies be marked.

(B/o)
PAN